

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9402 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

RAMANBHAI CHHAGANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DHIRENDRA MEHTA for Petitioners

MR. S.P.DAVE, LD.GOV'T. PLEADER for Respondent No.1 &

5.

MR UTPAL M PANCHAL for Respondent No. 2,3 & 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 22/01/97

ORAL JUDGEMENT

Rule. Ld. Govt. Counsel Mr. S.P.Dave waives
service of the rule for Respondents No. 1 and 5; while
Ld. Counsel Mr. Utpal Panchal waives service of the

rule for Respondents No. 2, 3 & 4 respectively.

After the issuance of the rule, the petition is taken up for final hearing.

The controversy centers round the question as to how the orders passed by the Mamlatdar under section 5 of the Mamlatdars Courts Act, 1906 could be executed and implemented. There was a proceeding under section 5 of the said Act between the parties. Ultimately a compromise purshish was submitted. On the basis of which the orders under section 5 of the Act of 1906 came to be passed. It was the feeling of the Respondents No. 2, 3 & 4 that the said orders were not executed and were not implemented. Therefore the said respondents had approached the concerned Mamlatdar with a prayer to initiate contempt proceedings against the petitioners. Any how, said application came to be filed. In other words, learned Mamlatdar had not initiated contempt proceedings against the petitioners.

The orders passed by learned Mamlatdar under section 5 of the Act of 1906 are required to be read along with a rough sketch showing the position of the land. It was agreed that the water could be taken by the said respondents through a channel situated on the northern direction of the land bearing Survey No. 523. It appears that, the contempt application was disposed of by the learned Mamlatdar, but once again some proceedings were initiated by the present respondents before the learned Mamlatdar, Olpad. The Section of the Act of 1906 has not been quoted in the application. Any how on reading of this application dated 30-9-1994 would go to show that the respondents herein wanted to have the relief which could be granted to them under the provisions contained under section 21(1) of the Mamlatdars Courts Act, 1906. Anyhow, it appears that the tenor of the order is to the effect that the leaned Mamlatdar was deciding the matter afresh under section 5 of the Act of 1960. These orders came to be confirmed by learned Deputy Collector, Olpad, Surat under the orders dated April 08, 1995. The above said orders are in challenge before me in the present petition.

The question which arises for consideration is, as to in any of the manner the orders pronounced by learned Mamlatdar under section 5 of the Mamlatdars Acourts Act, 1906 could be executed or implemented. There is a specific provision contained in section 21 of the Code of 1906. The Mamlatadar is authorised and empowered under these provisions to give effect to his orders by

issuing such orders to the Village Officers or to any subordinates under his control, or otherwise as he thinks fit. Therefore there is a specific provision meant for the execution of the orders passed by the Mamlatdar under section 5 of the Act of 1906.

It appears that, the authorities below were not clear on this aspect. The only course would be to set aside the orders passed by the authorities below, by saying that, the application made by the said Respondents herein on 30-9-1994 should be treated and decided under section 21 of the Mamlatdars Courts Act 1906. This exercise should be done within a period of three months, after affording a reasonable opportunity of being heard to the parties. I have no opinion to express the rival contentions of the parties in this respect. Rule is made absolute to the above said extent.

Ld. Counsel Mr. Utpal Panchal shall submit a xerox of the application dated 30-9-1994 during the course of the day. The same shall be taken on record of the present petition, along with the rough sketch being presented by the learned counsel.
